IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10415 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

AMUBHAI PRAGJIBHAI PARMAR

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner

MR KT DAVE, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 18/04/2000

ORAL JUDGEMENT

#. Commissioner of Police, Rajkot City, Rajkot passed an order on November 17, 1999 detaining the petitioner Amubhai Pragjibhai Parmar (Vaghri) in exercise of powers under section 3 (1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short).

#. The grounds of detention indicate that the detaining authority took into consideration three registered offences against the detenue and statements of two anonymous witnesses. The authority found that the petitioner is a "dangerous person". That his activities are detrimental to public order and that he is required to be immediately prevented from pursuing his illegal and anti-social activities in public interest. The detaining authority considered the possibility of resorting to less drastic remedies under ordinary law and ultimately came to a conclusion that the action under the provisions of the PASA Act is required to be taken.

#. The petitioner challenges the order of detention on various grounds. However, Ms. Subhadra Patel, learned advocate appearing for the petitioner submitted that the statements of anonymous witnesses have been recorded on November 16, 1999. They are verified by the detaining authority on November 17, 1999 and the order is passed on November 17, 1999 itself. Thus, there was no time for the authority to undertake exercise of examining the correctness and genuineness of the incidents and fear expressed by the witnesses. According to Ms. Patel, right of the detenue of making an effective representation is infringed. The statements therefore, cannot form basis of order of detention.

#. Ms. Patel submitted further that if the registered offences against the detenue are taken into consideration, they relate more to law and order situation and not public order. She has taken this Court through papers relating to registered offences furnished to the detenue by the detaining authority. She therefore submitted that the subjective satisfaction recorded by the authority about the activities of the detenue being detrimental to public order finds no support from the record. This would vitiate the satisfaction of the detaining authority and in consequence, the order of detention. She therefore, submitted that the petition may be allowed.

#. Mr. K.T.Dave, learned AGP has opposed this petition.

#. Considering the rival side contentions, it is clear and undisputed that the statements of anonymous witnesses were recorded on November 16, 1999. The same were verified by the detaining authority on November 17, 1999 and the order was passed on that very day.

#. So far as the statements of anonymous witnesses are concerned, it may be noted that the detaining authority has observed that the fear expressed by the witnesses an the statements are correct and genuine. Barring these statements, there appears nothing to indicate an exercise having been undertaken by the detaining authority for verifying correctness and genuineness of the statements and the fear expressed by the witnesses. The detaining authority has to take into consideration the background, the antecedents, the character, etc. of the detenue while considering the need for exercise of powers under Section 9(2) of the PASA Act. The authority has to scale the right of the detenue of making an effective representation on the one hand and the public interest on the other and has to strike a balance between the two. The detaining authority has not filed any affidavit nor is there any contemporaneous material to indicate undertaking of such exercise by the detaining authority and, therefore, the exercise of powers under section 9(2) of the PASA Act can be taken to have vitiated. No reliance, therefore, can be placed on these statements for sustaining the order of detention. There is improper exercise of powers under section 9(2) of the PASA Act, as there is no material to indicate the exercise as stated above (BAI AMINA v. State of Gujarat & others, 1981 GLR 1186 and Kalidas Chandubhai Kahar v. State of Gujarat & ors., 1993 (2) GLR 1659).

#. Adverting to the offences registered against the detenue, a perusal of the First Information Report and the other relevant documents supplied to the detenue makes it abundantly clear that there was no disturbance to public order. All that was involved was a law and order situation. Resultantly, the satisfaction arrived at by the detaining authority about the activities of the detenue being detrimental to public order is without any basis. Neither the statements nor the registered offences can be accepted to form the basis of this satisfaction.

#. In view of the above discussion, the reliance placed on by the detaining authority on the statements of anonymous witnesses and the registered offences cannot be upheld. The order of detention as well as the continued detention both are rendered bad in law. The petition, therefore, deserves to be allowed.

##. Now, if the registered offences are seen and the papers relating thereto are perused, they indicate the incidents of individual nature. They can at the most be said to have affected the law and order situation and not

public order. The detaining authority's satisfaction about the activity of the detenue being detrimental to public order, therefore, finds no support from the material considered by the detaining authority. The petition therefore deserves to be allowed.

##. In view of the above discussion, the petition is allowed. The impugned order of detention dated 17th November, 1999 passed against the detenue is hereby quashed and set aside. The detenue - Amubhai Pragjibhai Parmar (Vaghri) is ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no orders as to costs.

[A.L.DAVE, J.]

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